

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

Janice Denese Lewis,)	C/A No. 1:18-2451-CMC
)	
Plaintiff,)	
)	
v.)	
)	
)	OPINION & ORDER
Nancy A. Berryhill,)	
Commissioner of Social Security Administration,)	
)	
Defendant.)	
_____)	

Through this action, Plaintiff seeks judicial review of the final decision of the Commissioner of Social Security denying her claim for disability benefits. Plaintiff appealed pursuant to 42 U.S.C. §§ 405(g). The matter is currently before the court for review of the Report and Recommendation (“Report”) of Magistrate Judge Shiva V. Hodges, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rules 73.02(B)(2)(a) and 83.VII.02, *et seq.*, D.S.C. The sole issue addressed in the Report is whether Plaintiff should be required to pay the filing fee of \$400.

On September 5, 2018, Plaintiff filed an Application to Proceed Without Prepayment of Fees (“*In Forma Pauperis* Application”), in which Plaintiff reported she has \$57,390 in cash or in checking or savings accounts and that she receives \$1,706.43 from state disability retirement per month and \$185 from her father’s IRA per year. ECF No. 3. She also reported she has an IRA with \$9,176.00, a 401K with \$76,652.00, and home equity of \$70,000. *Id.* She reported approximately \$1244.50 in regular monthly expenses and \$11,414 in debts. *Id.* The Report, filed on September 6, 2018, recommends Plaintiff’s *In Forma Pauperis* application be denied. ECF No. 6. The Magistrate Judge advised the parties of the procedures and requirements for filing

objections to the Report and the serious consequences if they failed to do so. No objections have been filed and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).¹

The court has reviewed Plaintiff’s *In Forma Pauperis* application, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. Finding none, the court

¹ The court would reach the same result under a *de novo* review. The court agrees with the Report that Plaintiff would not be rendered destitute by paying the filing fee of \$400.00. Nor is there any indication that payment of the filing fee would impose an undue hardship on Plaintiff or block Plaintiff’s access to the courts. *See Carter v. Telectron, Inc.*, 452 F. Supp. 939 (S.D. Tex. 1976); *Abbot v. Commissioner of Social Security*, No. 4:10-2253, 2010 WL 4226151 at *1 (D.S.C. Sept. 17, 2010). On her *In Forma Pauperis* Application, Plaintiff reported she has \$57,390 in cash or in checking or savings accounts and that she receives \$1,706.43 from state disability retirement per month. ECF No. 3. Plaintiff has submitted no information as to the reason why she is unable to pay the filing fee despite her assets; therefore, the court finds that Plaintiff has the ability to pay the \$400.00 filing fee.

adopts and incorporates the Report by reference. For the reasons set forth therein, Plaintiff's *In Forma Pauperis* application is denied. Plaintiff shall have 14 days from the date of this Order to submit the required filing fee.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
September 27, 2018